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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,184	10/18/2001	Jean-Louis H. Gucret	08048.0019-00	5423

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EXAMINER

LE, HUYEN D

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/981,184

Applicant(s)

GUERET, JEAN-LOUIS H.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33, 35-126, 128-142, 160 and 161 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☒ Claim(s) 61-73 is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) 5, 7, 8, 84-92, 99 and 134-142 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 04/23/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims withdrawn from consideration are 11-15,18,20-22,25,26,36,37,39-51,54-59,74-83,102,105-108,111,113-115,118,119 and 131-133.

Continuation of Disposition of Claims: Claims rejected are 1-4,6,9,10,16,17,19,23,24,27-33,35,38,52,53,60,93-98,100,101,103,104,109,110,112,116,117,120-126,128-130,160 and 161.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 6, 9, 10, 16, 17, 19, 23, 24, 27, 35, 52, 53, 60, 93, 94, 96-98, 100, 101, 103, 104, 109, 110, 112, 116, 117, 120 128-130, 160, 161 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett (4,974,981).

Regarding claims 1, 4, 6, 60, 93, 128, 160, and 161 the Bennett reference discloses a device comprising: a receptacle 30 containing a cosmetic product 58 and including the bottom end portion 42 of a receptacle 30 which constitutes a housing; a removable unit 22,24 defining a substantially enclosed space, at least part of the removable unit 22,24 configured to be removably received in a housing, the removable unit 22,24 comprising a first portion 24 being configured to be removably engaged with the housing of receptacle 30, a second portion 34 configured to releasably cooperate with a first portion 24 so as to place the removable unit 22,24 in a closed position to substantially restrict access to the space, the first portion 24 being configured to be removed from the housing together with the second portion 34 in the closed position; an application element 32 configured to be received in the substantially enclosed space when the application element 32 is not in use for applying the product 58, the application element 32 is secured to the second portion 34, wherein the device further comprises a

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cosmetic product 58 to be applied using the application element 32, wherein a removable unit 22,24 is configured to be removably positioned on the receptacle 30 having a dispenser 26 on portion 40 of the receptacle 30 separate from a terminating portion 42 on which the removable unit 22,24 is configured to be positioned.

Regarding claims 3 and 96, the application element 32 is configured to hold a reserve a product.

Regarding claims 6 and 98, the first portion 24 and the second portion are configured to cooperate with one another in a substantially leakproof manner when the removable unit is in the closed position.

Regarding claims 10 and 101, the portion 34 to which the application element 32 is secured is configured as a handle member.

Regarding claims 16 and 109, the removable unit 22,24 comprises an end piece 38 configured to cooperate with a portion 42 of the receptacle 30.

Regarding claims 17 and 110, the end piece 38 is configured to cooperate with a pump 28 associated with the receptacle 30.

Regarding claims 19 and 112, the receptacle 30 defines an orifice 54 for flowing product into the removable unit 22,24 when the removable unit 22,24 is positioned on the receptacle 30, and the wherein the device further comprises a sealing member 39 configured to establish a substantially leakproof connection between the removable unit 22,24 and the orifice 54.

Regarding claims 23 and 116, removable unit 22,24 comprises a wall 39 defining an orifice configured to flow product therethrough.

Regarding claims 24 and 117, the wall 39 defines a bottom of the space containing the application element 32 when the removable unit 22,24 is positioned on the receptacle 30.

Regarding claims 27 and 120, the application element 32 is made of a non-compressible material.

Regarding claim 35, the housing comprising a wall 42 for guiding movement of the removable unit 22,24 while it is place in position on the receptacle 30.

Regarding claims 52 and 129, the application element 32 occupies a portion of the space when the product is configured to expand within the space upon being loaded with product.

Regarding claim 94, the first portion 24 and the second portion 34 are configured to be separated from each other when removable unit is in the open position.

Regarding claim 97, the first portion 24 and the second portion are removably engageable with one another via one of snap-fastening.

3. Claims 1, 3, 16, 35, 53, 60, 160 are rejected under 35 U.S.C. 102(b) as being anticipated by Lecker (2,480,331).

Regarding claims 1, 60 and 160, the Lecker reference discloses a device (Figure 3) comprising: a receptacle 5 containing a cosmetic product and including a housing 4; a removable unit 1 defining a substantially enclosed space and configured to be removably received in the housing 4, the removable unit 1 being configured to be removed from the housing 4 while the unit 1 defines the substantially enclosed space; an application element 3 configured to be housed within the substantially enclosed

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space when the application element 3 is not in use for applying product, the application element being further configured to be loaded with product from the receptacle 5 when the removable unit 1 is positioned on the receptacle 5, wherein the application element comprises a surface configured to apply the loaded product, the surface facing the receptacle 5 when the removable unit 1 is positioned on the receptacle 5 during loading of the application element 3 with the product.

Regarding claim 3, the application element 3 is configured to hold a reserve a product.

Regarding claim 16, the removable unit 1 comprises an end piece 14 configured to cooperate with a portion 13 of the receptacle 5.

Regarding claim 35, the housing 4 comprising a wall for guiding movement of the removable unit 1 while it is place in position on the receptacle 5.

Regarding claim 53, the removable unit 1 is configured to be placed in a closed position in which access to the space is substantially prevented and an open position in which access to the space is permitted.

4. Claims 60, 160 and 161 are rejected under 35 U.S.C. 102(b) as being anticipated by Munroe (813,813).

The Munroe reference discloses a device comprising: a removable unit 4 defining a substantially enclosed space, at least part of the removable unit 4 configured to be removably received in a housing 3, the removable unit 4 comprising a first portion 7 being configured to be removably engaged with the housing 3 of receptacle 2, a second portion 15 configured to releasably cooperate with a first portion 7 so as to place the

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removable unit 3 in a closed portion to substantially restrict access to the space, the first portion 7 being configured to be removed from the housing 3 together with the second portion 15 in the closed position; an application element 14a configured to be received in the substantially enclosed space when the application element 14a is not in use for applying the product, the application element 14a being further configured to be loaded with product from the receptacle 2 when the application element 14a is secured to the second portion 14, wherein the device further comprises a surface configured to apply the loaded product, the surface facing the receptacle 2 when the removable unit 4 is positioned on the receptacle 2 during loading of the application element 14a with product.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 28-33, 95, 121-126 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett (4,974,981) in view of Vasas (6,447,191).

The Bennett reference discloses a device for applying a product as described above.

Although the Bennett reference does not disclose that the application member is made of a porous material such as foam, flocked pad, fabric pad, or other materials,



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attention is directed to the Vasas reference which discloses an application member 44 made of a porous material or other material.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an application member made of a porous material or other material in the Bennett device in view of the teaching of the Vasas reference, wherein so doing would amount a mere substitution of one functional equivalent application means for another within the same art that would work equally well in the Bennett device.

7. Claims 2, 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lecker (2,480,331) in view of Vasas (6,447,191).

The Lecker reference discloses a device for applying a product as described above.

Although the Lecker reference does not disclose that the application member is made of a porous material such as foam, flocked pad, fabric pad, or other materials, attention is directed to the Vasas reference which discloses an application member 44 made of a porous material or other material.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an application member made of a porous material or other material in the Lecker device in view of the teaching of the Vasas reference, wherein so doing would amount a mere substitution of one functional equivalent application means for another within the same art that would work equally well in the Lecker device.

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***Allowable Subject Matter***

8. Claims 5, 7, 8, 84-92, 99, 134-142 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. Claims 61-73 are allowed.

***Response to Arguments***

10. Applicant's arguments with respect to claims 1, 60, 93, 128, 160 and 161 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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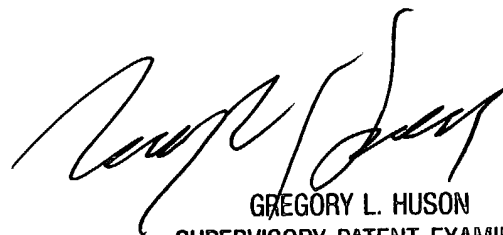
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 703-306-5504.

The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HL  
August 31, 2004



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